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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

RICHARD MOLINA, et. al.,

Defendants and Appellants.

G055709

(Super. Ct. No. 15CF2461)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Jonathan S. Fish, Judge. Judgment as to Molina is reversed in part, remanded in part, and affirmed in part. Judgment as to Ramos is affirmed.

Kristen Owen, under appointment by the Court of Appeal, for Defendant and Appellant Richard Molina.

John F. Schuck, under appointment by the Court of Appeal, for Defendant and Appellant Steven Allen Ramos.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Senior Assistant Attorney General, Charles C. Ragland and Scott C. Taylor, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

Richard Molina was convicted of attempted premeditated murder, battery with serious bodily injury and possession of a weapon in a correctional facility. Steven Allen Ramos, another inmate of the same correctional facility, was convicted of being an accessory after the fact based on his effort to hide the weapon used by Molina, and possession of a weapon in a correctional facility. Both Molina and Ramos appeal.

Molina contends the court erred by imposing concurrent sentences for his convictions on the battery and weapons possession charges, as both sentences should have been stayed pursuant to Penal Code section 654. The Attorney General concedes that the concurrent sentence for battery should have been stayed, but argues the weapons possession count was supported by sufficient evidence of a separate intent. We agree and direct the trial court to modify the judgment to reflect that Molina's sentence for battery is stayed. In all other respects his convictions are affirmed.

Ramos contends the evidence is insufficient to support his convictions because there was insufficient evidence he was aware Molina intended to attack the victim before the attack occurred, that he ever picked up the razor apparently used by Molina in the attempted murder, or that he ever had possession of the razor found in his cell. We cannot agree. A conviction can be supported by circumstantial evidence alone, where that evidence supports reasonable inferences pointing to the defendant's guilt. Here, Ramos's course of conduct in the immediate aftermath of the attempted murder, including picking up something off the floor right after Molina used a razor to attack the victim, and returning briefly to his cell where the razor was later discovered on the sink, freshly washed and still wet, was a sufficient basis for the jury to infer that the item he

picked up was the razor, and that he carried it to his cell in an effort to assist Molina. We therefore affirm his convictions.

FACTS

The crimes at issue in this appeal took place in Module L of the Theo Lacy Jail, where both Molina and Ramos were incarcerated. The module is divided into six sectors, each of which has 16 cells—even numbered cells on the top floor and odd numbered cells on the bottom floor. Two inmates are assigned to each cell.

There is also a dayroom area in front of the cells on each tier with televisions, tables, and phones. Each day the inmates have access to the dayroom for approximately one hour. Only four inmates, from two cells, are allowed into the dayroom at one time; at the end of their assigned hour, those four inmates are returned to their cells before the next group of four can use the dayroom for an hour. The inmates line up for their morning and evening meals at the dayroom sector doors, but they are expected to return to their cells to eat so the next group of four can receive food.

Molina and his cellmate Juan Monzon were assigned to cell 11, while Ramos and his cellmate Mark Crapo occupied cell 9, in the same sector of Module L. Those two cells shared dayroom time, including at morning and evening meals.

On October 14, 2015, after Molina, Monzon, Ramos and Crapo were released to line up at the dayroom door to get their evening meals, Crapo was first in line, followed by Monzon, Molina, and then Ramos.

While in line, Molina reached around from behind Monzon and made a dragging motion across Monzon's neck, from the center to the back right side. The two men then began to fight. Crapo then quickly backed away toward the corner near the dayroom door and stood facing the corner. Ramos did not act in that manner. Instead, within a second or two of Molina's slashing motion across Monzon's neck, Ramos bent down to the floor, apparently retrieved something, and then went immediately back to his

cell where he remained for about five seconds before returning to the dayroom area. Video from inside Ramos's cell revealed that when he entered the cell, he went to the sink/toilet area, the only part of the cell not visible to the video camera.

After deputies broke up the fight, they realized Monzon had a cut across his neck, consistent with the slashing motion Molina had made and with the use of a razor. The dayroom was searched, including its trashcan, but no razor or other cutting implement was found. All four inmates were searched, and again no weapon was found. However, when the guards searched their two cells, they found a razor blade on the sink in Ramos's cell.¹ Although the blade had no blood on it, both it and the sink were wet—as though the razor blade had been recently washed off.

When Ramos was initially questioned about the incident, he denied picking anything up off the floor of the dayroom. He claimed he went back to his cell in an attempt to “lock it down,” and then returned to the dayroom to make sure he got fed. When Ramos was questioned again the following day, he acknowledged that he had picked something up off the dayroom floor, but he claimed it was a pencil.

Molina was charged by information with attempted premeditated murder (Penal Code §§ 187, subd. (a), and 664, subd. (a);² count 1), battery with serious bodily injury (§ 243, subd. (d); count 2), and possession of a weapon in a correctional facility (§ 4574, subd. (a); count 4). As to counts 1 and 2, it was alleged pursuant to section 12022, subdivision (b)(1), that Molina personally used a deadly weapon, a razor blade.

Ramos was charged by information with being an accessory after the fact in relation to Molina's alleged crimes (§ 32; count 3), as well as possession of a weapon in a

¹ The razor blade looked like one that had been removed from the orange plastic shaving razors available at the jail commissary.

² All further statutory references are to the Penal Code.

correctional facility (§ 4574, subd. (a); count 4). It was also alleged that Molina had served four prior prison terms and that Ramos had served two prior prison terms (§ 667.5, subd. (b)).

Both Molina and Ramos were found guilty on all counts.³ In November 2017, Molina was sentenced to eight years to life in prison on count 1, including one year for the deadly weapon enhancement and four years for the four prior prison terms. He was also sentenced to concurrent terms of three years each on the counts of battery and possession of a deadly weapon.

At the same hearing, Ramos was sentenced to four years on count 4, possession of a deadly weapon, plus two years for his prison priors. The court stayed Ramos's sentence on count 3 pursuant to section 654.

DISCUSSION

1. Molina's Sentencing

Molina contends the trial court erred by sentencing him—albeit concurrently—on both his convictions for battery and possession of a weapon in a correctional facility. As Molina points out, section 654 provides that “[a]n act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one” That statute “has been interpreted to prohibit double punishment for separate crimes committed with only one criminal objective.” (*People v. Pena* (1992) 7 Cal.App.4th 1294, 1311.)

³ The information also alleged that Molina inflicted great bodily injury, but the jury found that allegation not true.

Molina argues that his crimes of battery and weapon possession were both committed with the same objective: i.e., the attempted murder of his cellmate, Monzon. As such, they could not be separately punished.

The Attorney General agrees with respect to the battery count and so do we. Although we are obligated to uphold the trial court's sentencing decision if there is substantial evidence to support it (*People v. Saffle* (1992) 4 Cal.App.4th 434, 438 ["The factual finding that there was more than one objective must be supported by substantial evidence"]; *People v. Osband* (1996) 13 Cal.4th 622, 730-731), we conclude there is no such evidence here.

At trial, the prosecutor made clear that the alleged battery would have been accomplished by "causing an object to touch the other person . . . [l]ike the razor blade." Thus, in this case, the act constituting the attempted murder and the act constituting the battery were the same. And that single act, constituting both crimes, can only have been committed with a single intention. Consequently, punishment for the battery count should have been stayed pursuant to section 654.

The weapon possession count is different, however, and we agree with the Attorney General that imposing a separate punishment for that count was permissible. Molina did not begin possessing the razor blade during his attempt to murder Monzon. (See *People v. Venegas* (1970) 10 Cal.App.3d 814, 818–821 [no separate intent to possess a firearm where defendant wrested the firearm from the victim he shot].) And there is no evidence suggesting Molina grabbed the razor blade opportunistically, in the moments before he used it. Rather, it is apparent Molina was in possession of the blade before he commenced his other crimes. Where there was "substantial evidence of possession antecedent to the assault," separate punishment does not violate section 654. (*People v. Simon* (1989) 208 Cal.App.3d 841, 852; *People v. Jones* (2002) 103 Cal.App.4th 1139, 1145 ["section 654 is inapplicable when the evidence shows that the

defendant arrived at the scene of his or her primary crime already in possession of the firearm”].)

Molina relies on *People v. Garcia* (1978) 86 Cal.App.3d 314, 317 (*Garcia*), for the proposition that “[i]f the evidence shows no other purpose for the possession than the simultaneous commission of an assault [or battery], the possession becomes merely a part of an indivisible transaction and separate punishment is not permitted.” In *Garcia*, the court concluded it was improper to separately punish the defendants, who were two of four occupants of a vehicle that were shooting at the occupants of another car, and then shooting at police officers during a high speed chase, for their unlawful possession of the sawed-off shotguns used to commit those assaults. However, that opinion does not explain the basis for the court’s conclusion “that the evidence shows that defendants possessed the sawed-off shotgun for no distinct or separate purpose than the random vicious assaults which they committed on the streets of the community.” (*Ibid.*)

This case is distinguishable from *Garcia*, because there is substantial evidence that Molina was in possession of the razor blade before he arrived on the scene of Monzon’s attempted murder. Thus, Molina could be separately punished for that possession pursuant to section 654.

2. *Substantial Evidence Against Ramos*

In his appeal, Ramos argues the evidence was insufficient to sustain his convictions for either being an accessory after the fact to Molina’s attempted murder of Monzon or possession of a weapon. In reviewing such a claim, we apply the substantial evidence test. “Under this standard, the court ‘must review the whole record in the light most favorable to the judgment below to determine whether it discloses *substantial evidence*—that is, evidence which is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.’ [Citations.] The focus of the substantial evidence test is on the *whole* record of evidence

presented to the trier of fact, rather than on “isolated bits of evidence.”” (*People v. Cuevas* (1995) 12 Cal.4th 252, 260–261.) The conviction shall stand “unless it appears “that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].”” (*People v. Cravens* (2012) 53 Cal.4th 500, 508.)

In applying the substantial evidence test “[w]e must accept factual inferences in favor of the trial court’s ruling. [Citation.] If there is conflicting testimony, we must accept the trial court’s resolution of disputed facts and inferences, its evaluations of credibility, and the version of events most favorable to the People, to the extent the record supports them.” (*People v. Zamudio* (2008) 43 Cal.4th 327, 342.)

“The crime of accessory consists of the following elements: (1) someone other than the accused, that is, a principal, must have committed a specific, completed felony; (2) the accused must have harbored, concealed, or aided the principal; (3) with knowledge that the principal committed the felony or has been charged or convicted of the felony; and (4) with the intent that the principal avoid or escape from arrest, trial, conviction, or punishment.” (*People v. Plengsangtip* (2007) 148 Cal.App.4th 825, 836.)

In arguing the evidence was insufficient, Ramos does not dispute that Molina committed a felony. Instead, he relies on the fact there is no *direct* evidence that he and Molina ever discussed the plan to attack Monzon, that he actually knew the crime Molina committed was a felony, or that he did anything to aid Molina in avoiding the consequences of that crime. He points out that no one testified they “saw Molina with a razor blade,” or “saw [Ramos] pick up a razor blade,” and claims “there is no evidence that the blade [subsequently found on the sink in Ramos’s cell] was not already there when he and Crapo exited the cell for dinner.” In the absence of such direct evidence, Ramos contends the jury’s verdict was impermissibly speculative.

In making those arguments, Ramos ignores the fact that his conviction can be based on only circumstantial evidence. (*People v. Towler* (1982) 31 Cal.3d 105, 118 [“Whether the evidence presented at trial is direct or circumstantial, . . . the relevant

inquiry on appeal remains whether *any* reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt[.]

In this case, the circumstantial evidence that Ramos aided Molina was strong. After viewing the photographs of Monzon's injury, the jury became convinced the weapon Molina used was a razor blade, rather than the "broken plastic spoon" that Ramos suggests was also a possibility; Ramos does not explain why such a conclusion was unreasonable. We consequently presume that a razor blade was Molina's weapon.

And while it is true that no one claimed to have actually seen Ramos pick up the razor blade from the floor, he acknowledges the evidence demonstrates he picked up something in the immediate wake of Molina's attempt to murder Monzon. He then rushed back to his cell for a brief visit. After first denying he had picked up anything, Ramos later claimed the item he retrieved from the floor was a pencil—a curious response to witnessing a vicious attack on another inmate only a few feet away. Ramos explained his sudden desire to return to his cell as an effort to "lock it down," but there is no indication he did anything during the few seconds he was there which might correlate to such a desire. Thus, the jury could reasonably infer he was lying about why he returned to his cell.

Finally, while it is possible that the still-wet razor blade found in Ramos's cell was a different razor blade than the one used by Molina to attempt to commit the murder of a fellow inmate, the fact that no other blade was found in any place accessible to any of the four inmates in the wake of the attack gave the jury ample basis to reasonably infer it was the same one.

Based on the foregoing, we conclude there was substantial evidence that Ramos did retrieve the razor blade Molina used in his attack on Monzon, and he then ran back to his cell with the purpose of hiding it from responding deputies.

This leaves only the questions of whether Ramos knew that Molina committed the felony, and whether he grabbed the weapon used in its commission

intending to help Molina avoid detection or punishment. As to the first point, Ramos suggests that the prosecutor must prove that he knew the crime Molina committed *was a felony*, rather than a lesser crime.⁴ He is mistaken. The crime of being an accessory after the fact does not depend on the defendant's knowledge of the finer points of criminal law. Rather, it turns on whether the defendant was aware the principal *committed the felony act* at issue in the charge, or was charged with committing it. (*People v. Moomey* (2011) 194 Cal.App.4th 850, 858 [*Moomey*] ["In determining whether the alleged accessory had such knowledge, 'the jury may consider such factors as his possible presence at the crime or other means of knowledge of its commission'"].) In *Moomey*, the court found the evidence was sufficient to uphold defendant's conviction for being an accessory after the fact in relation to his girlfriend's burglary of a grocery store, even though her crime was a "wobbler," which may be punished as either a misdemeanor or a felony. As the court explained, such a crime qualifies as a felony until such time as it is reduced to a misdemeanor for purposes of sentencing. There was no suggestion in *Moomey* that the defendant was required to have knowledge of that arcane point of law to support his conviction.

In this case, the evidence strongly suggests that Ramos knew Molina committed the attempted murder at issue in his accessory count, as it is undisputed Molina committed it in his presence.

And as to the second point, the prosecutor argued that Ramos was aware of Molina's plan to kill Monzon and that he had agreed to assist him in that plan before they lined up for dinner. As the prosecutor pointed out, the contrast between Crapo's response to the attack, and Ramos's response, was telling. Crapo immediately distanced himself

⁴ Ramos claims this assertion is supported by *People v. Lauria* (1967) 251 Cal.App.2d 471, 481-482, which does not discuss the elements of a charge of being an accessory after the fact. Instead, it addresses the proof necessary to demonstrate participation in a conspiracy.

from the violence. As the prosecutor noted, Crapo's "reaction is what you would expect a reasonable person to do who really didn't know what was going on." Ramos reacted quite differently. As the prosecutor argued, Ramos displayed no shocked reaction to Molina's attack, nor did he recoil. Instead, he stayed put, and within a second or two of the attack he bent down to pick up what he claimed was a pencil. He then ran back to his cell. His reaction suggested, in the prosecutor's words, that "Ramos [knew] exactly what to do" when Molina attacked Monzon because he was expecting it. The jury could reasonably reach that same conclusion, and we must presume they did. And given that Ramos was in on Molina's plan, the jury could also reasonably infer that his immediate retrieval and attempt to hide Molina's weapon was done for the purpose of assisting Molina.

For all these reasons, we conclude the evidence was sufficient to sustain each of the elements of Ramos's crime of being an accessory after the fact, and we affirm his conviction.

Ramos's attack on the evidence supporting his conviction for possession of a weapon in a correctional facility is similarly unpersuasive. He argues, "For all the evidence shows, the razor blade may have belonged to Crapo. Crapo may have placed the blade on the sink" and "[t]here is no direct evidence that appellant was aware of its presence on the sink." But the fact the jury could have drawn different inferences from the evidence does not undercut its verdict.

Ramos's argument ignores compelling evidence that it was he who was responsible for the disappearance of the razor blade used by Molina in his attack, and that he took it back to his cell. Given that there was no evidence suggesting Crapo had any razor blade in his possession, or that he had any opportunity to obtain one, the most obvious inference to be drawn was that it was Ramos, rather than Crapo, who was responsible for the razor blade in their cell. Thus, the evidence was sufficient to support the charge that it was Ramos who possessed that razor blade in the correctional facility.

DISPOSITION

The judgment as to Molina is reversed in part and remanded to the trial court with instructions to stay his sentence on count 2, the battery charge. It is affirmed in all other respects. The judgment as to Ramos is affirmed.

GOETHALS, J.

WE CONCUR:

O'LEARY, P. J.

MOORE, J.